



Federal Communications Commission
Washington, D.C. 20554

October 1, 2019

DA 19-985

Ms. Radha Sekar
Chief Executive Officer
Universal Service Administrative Company
700 12th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Sekar:

By this letter, as part of our ongoing oversight of the Universal Service Administrative Company (USAC), we provide guidance to USAC regarding its application of the Federal Communications Commission's E-Rate competitive bidding rules.¹ Specifically, we explain how USAC should treat E-Rate applications for which the applicant mistakenly selected a drop-down menu option on its FCC Form 470 that did not fully reflect the services for which it intended to seek bids. Concurrent with the release of this letter, the Wireline Competition Bureau (Bureau) and the Office of the Managing Director are releasing a Public Notice seeking comment on improving the FCC Form 470 drop-down menu options to alleviate ongoing confusion.²

USAC began using drop-down menu options on the FCC Form 470 to assist applicants with identifying the services for which they intend to seek bids when it introduced the E-Rate Productivity Center for funding year 2016.³ Applicants select the drop-down menu item on the FCC Form 470 that best describes the service for which they seek bids, which enables service providers to identify services they wish to bid on.⁴ Since the drop-down menu options were introduced in funding year 2016, the

¹ See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company at IV.A.6 (Dec. 19, 2018).

² See *Wireline Competition Bureau and Office of the Managing Director Seek Comment on Improving FCC Form 470 Drop-Down Menu*, WC Docket No. 13-184, Public Notice, DA 19-986 (WCB rel. Oct. 1, 2019) (Improving FCC Form 470 Public Notice).

³ See Schools and Libraries News Brief, Preparing to File FCC Form 470 for FY2016 (dated July 10, 2015), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=631>.

⁴ The Category One drop-down menu items on the FCC Form 470 for funding year 2019 were: "Leased Lit Fiber (with or without Internet access)," "Internet Access and Transport Bundled (Non-Fiber)," "Transport Only – No ISP Service Included (Non-Fiber)," "Internet Access: ISP Service Only (No Transport Circuit Included)," "Leased Dark Fiber and Leased Lit Fiber," "Self-Provisioned Network (Applicant Owned and Operated Network) and Services Provided Over Third-Party Networks," "Network Equipment," "Maintenance & Operations," "Cellular Data Plan/Air Card Service," and "Other." See USAC website, FCC Form 470 Category One Service Drop-Down Menu Reference Table (updated July 2018), <https://www.usac.org/res/documents/sl/pdf/handouts/FCC-Form-470-C1-Dropdown-Table.pdf> (last visited June 5, 2019) (Category One Drop-Down Menu Table). USAC has changed the names of these drop-down menu options slightly since funding year 2016 to make them clearer and to mitigate

appropriate drop-down option for an applicant seeking bids for Internet access delivered to its premises has been the “Leased Lit Fiber (with or without Internet access)” or “Internet Access and Transport Bundled (Non-Fiber)” option.⁵ The appropriate drop-down option for an applicant seeking bids on bulk Internet that the applicant is responsible for transporting to its premises via a separate circuit is the “Internet Access: ISP Service Only (No Transport Circuit Included)” option.⁶

Last year, USAC instituted separate drop-down menu options for fiber and non-fiber services, which caused confusion regarding the proper FCC Form 470 drop-down menu option to select when seeking bids. In response to that confusion, the Bureau and the Office of the Managing Director issued a guidance letter directing USAC not to find a competitive bidding violation in funding year 2018 where an applicant selected the wrong FCC Form 470 drop-down menu option for fiber or non-fiber services, provided the service requested on the FCC Form 470 matched the service selected on the FCC Form 471, regardless of whether service was provided via fiber, and the applicant had otherwise complied with all of the Commission's competitive bidding rules.⁷

Earlier this year, stakeholders asserted that some funding year 2019 applicants intended to seek bids for and ultimately applied for Internet access to their premises, but mistakenly sought bids using only the “Internet Access: ISP Service Only (No Transport Circuit Included)” drop-down menu option, which applies only to bulk Internet that the applicant would be responsible for transporting to its premises.⁸ Under the Commission's E-Rate competitive bidding rules, applicants cannot submit funding requests for services not included on the applicant's FCC Form 470.⁹ Stakeholders have expressed concerns that USAC might determine that applications impacted by this issue violate the Commission's competitive bidding rules.¹⁰ Although a majority of funding year 2019 funding requests potentially impacted by this problem have already been funded, we nonetheless recognize that USAC could issue commitment adjustments for these funding requests and deny those funding requests that have not already been funded.¹¹ Therefore, to provide certainty to applicants on the availability of E-Rate funds, we provide the guidance below.

potential competitive bidding violations. See Schools and Libraries News Brief Special Edition, Simplified Drop-down Options for Eligible Services on FY2018 FCC Form 470 (Aug. 22, 2017), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=786>. In funding year 2016, the names of these drop-down menu options were: “Lit Fiber Service,” “Internet Access & Transport Bundled,” “Transport Only – No ISP Service Included,” “Internet Access: ISP Service Only,” “Dark Fiber,” “Self-provisioning,” “Cellular Data Plan/Air Card Service,” and “Other.” See Schools and Libraries News Brief, Completing FCC Form 470, Part 2 – Category One Service Requests (dated Aug. 7, 2015), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=635>.

⁵ See Schools and Libraries News Brief, Additional Common Questions Received by CSB (dated Mar. 18, 2016), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=672>; Category One Drop-Down Menu Table.

⁶ See *id.*

⁷ See Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau and Mark Stephens, Director, Office of the Managing Director, to Radha Sekar, Chief Executive Officer, USAC, 33 FCC Rcd 4499 (WCB & OMD 2018).

⁸ See, e.g., Letter from John Harrington, CEO, Funds for Learning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, WC Docket No. 13-184, at 20 (filed Mar. 8, 2019) (Funds for Learning March 2019 Letter); Letter from Debra Kriete, Chair, SECA, CC Docket No. 02-6, WC Docket No. 13-184 (filed Apr. 2, 2019) (SECA April 2019 Letter); Letter from John Harrington, CEO, Funds for Learning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, WC Docket No. 13-184, at 5 (filed May 5, 2019) (Funds for Learning May 2019 Letter).

⁹ See 47 CFR § 54.503(b)-(c).

¹⁰ See SECA April 2019 Letter; Funds for Learning May 2019 Letter.

¹¹ See Funds for Learning May 2019 Letter at 5.

Guidance to USAC. Given the apparent confusion of some applicants regarding USAC’s drop-down menu, the concerns raised by stakeholders about the treatment of their applications, and the potential adverse impact to applicants who were acting in good faith, we are providing guidance to USAC on how it should apply the Commission’s competitive bidding rules with respect to applicants’ use of the “Internet Access: ISP Service Only (No Transport Circuit Included)” drop-down menu option for funding year 2019.¹² We direct USAC not to deny any remaining pending application or issue a commitment adjustment for any application solely because the applicant selected the “Internet Access: ISP Service Only (No Transport Circuit Included)” drop-down menu option and subsequently selected on its FCC Form 471 a service that delivers Internet access to its premises. For those applications, USAC should not find a competitive bidding violation so long as the applicant has otherwise complied with all of the Commission’s competitive bidding rules. This guidance will alleviate concerns that USAC will issue denials or commitment adjustments on this basis.

Public Notice to Address FCC Form 470 Confusion. Recognizing that changes to the FCC Form 470 may be necessary to alleviate applicant confusion around the drop-down menu options going forward, as well as the importance of public input to improve the FCC Form 470 in a manner that serves applicants and service providers alike, the Bureau is releasing a Public Notice seeking comment on future improvements to the FCC Form 470 concurrent with the release of this letter.¹³ We hope that the comments received in response to this Public Notice will facilitate development of FCC Form 470 drop-down menu options for future funding years beginning in funding year 2021.

We trust that this guidance will be helpful to USAC in processing applications. We would be pleased to answer any questions you may have.

Sincerely,



Kris Anne Monteith
Chief
Wireline Competition Bureau



Mark Stephens
Director
Office of the Managing Director

¹² This guidance also applies to the “Internet Access: ISP Service Only” drop-down menu option, as it was known before its wording was changed slightly in 2019. See Schools and Libraries News Brief, FY2019 FCC Form 470 Available on July 1 (dated June 29, 2018), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=839>.

¹³ See Improving FCC Form 470 Public Notice.